United States Department of the Interior
FISH AND WILDLIFE SERVICE
UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

In Reply Refer To
FWS/R6
ES/UT
03-0499

August 13, 2003

Memorandum

To: Manager, Price Field Office, Bureau of Land Management, Price, Utah

From: Utah Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Salt Lake City, Utah

Subject: Informal section 7 consultation on the Bill Barrett Corporation's Stone Cabin 3-D Seismic Survey Project, Carbon County, UT

**Proposed Action**:

The Fish and Wildlife Service (Service) has reviewed the Biological Assessment (BA) for the Bill Barrett Corporation's Stone Cabin 3-D Seismic Survey Project, in Carbon County, Utah. Dawson Geophysical Company (DGC), under contract to Bill Barrett Corporation (BBC), proposes to conduct an exploratory, three-dimensional (3D), geophysical seismic survey of the Stone Cabin 3D Seismic Survey Project. The proposed Project Area lies in northeastern Carbon County, Utah, and is approximately 90 square miles in size (57,500 acres). The exploratory seismic survey would involve: a) the generation of ground vibration by both detonation of explosives placed underground and by vibroseis equipment; and b) the recording of reflected sound waves and patterns arising from the different underground geologic strata.

The source lines would run approximately parallel, 1,980 feet apart, with source points (either shot holes or vibroseis locations) spaced approximately 314 feet apart along the source line. There would be a total of approximately 5,388 source points totaling approximately 320 miles of source lines. The recording of seismic information would involve a total of approximately 71 parallel lines of receiver (geophone) stations laid out in a north-south orientation, at intervals of approximately 1,320 feet.

Methods of generating ground vibration would differ across the project area based on vegetation type, terrain, slope conditions, and other obstacles. Drilling of holes (shot holes) by off-road, buggy-mounted drills and the detonation of explosives (shots) placed in the shot holes would account for approximately 2,487 (46 percent) of the 5,388 source points. Heli-portable drill rigs would access approximately 2,375 source points (44 percent) on steeper and less accessible

terrain. Vibrator (vibroseis) buggies would access about 526 source points (ten percent) on less steep terrain confined to existing roads and trails.

Within steep slope areas of the four major canyons found in this area, activities would be confined to pedestrian traffic roads in the canyon bottoms and to heli-portable locations on ridge spurs in a few areas of Jack Canyon and its tributaries. Approximately 19,000 acres of the 57,500-acre Project Area would be subject to very limited access due to steep topography.

Dawson Geophysical and the BLM will implement the following mitigation measures (EA and BA) in areas identified as potential Mexican spotted owl habitat:

1) Signs requesting recreationists to remain on existing roads and trails will be posted as needed to minimize subsequent ORV usage in the area.

2) Drill holes located in the designated critical habitat will be reseeded.

3) On a case by case basis, BLM would require reseeding on tracks to discourage ORV use.

4) Applicant-committed environmental protection measures for Vegetation Resources Protection (Section 2.3.7.7) state that Dawson Geophysical would avoid larger shrubs and trees; that no cutting or removal of shrubs or trees is proposed; and that buggy drill operators would be directed to approach road and trail crossings at a reduced angle to reduce visibility of the tracks to recreationists.

**Informal Consultation:**

Based on the information provided in the July 29, 2003 EA and BA, the revised BA of August 10, 2003, including the aforementioned project commitments specific to the Mexican spotted owl; Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances (2002); the Mexican Spotted Owl Recovery Plan (1995); field reviews conducted by David Willey (1997 and 2000) and Environmental Industrial Services (EIS)(2001 through 2003); e-mail communications from Diana Whittington of our office to David Mills of your office (May 7, June 16, and August 8, 2003), and a meeting between Ms. Whittington and Mr. Mills at your office on July 23, 2003; the U.S. Fish and Wildlife Service concurs with your determination that the proposed project and will have no effect on Barneby peppergrass, Barneby thelypody, Despain footcactus, shrubby reed-mustard, Wright fishhook cactus, clay thelypody, Jones Cycladenia, last chance townsendia, Maguire daisy, Uinta Basin hookless cactus, Ute ladies tresses, Winkler footcactus, Graham beardtongue, horseshoe milkvetch, White River beardtongue, black-footed ferret, gray wolf, Grizzly bear, southwestern willow flycatcher, whooping crane, bald eagle, mountain plover, yellow-billed cuckoo, bonytail, Colorado pikeminnow, humpback chub, and razorback sucker. In addition, critical habitat does not occur for these species in the project area.

In a recent decision issued by the District Court for the District of Columbia, the Service has been enjoined from issuing our concurrence for actions that are "not likely to adversely affect" the Canada lynx. The Court's order was issued on December 26, 2002, and was effective immediately. Until the Court's injunction is lifted, section 7 consultation for actions that "may

affect" the Canada lynx can only be completed using the formal consultation procedures (see 50 CFR 402.14) and the delivery of a final biological opinion. Similarly, we can not issue a concurrence for "no effect" determinations for Canada lynx. In the meantime, the court order does not enjoin federal agencies from proceeding on "no effect" determinations. Written concurrence from the Service is only required if an action "may affect" a listed species (50 CFR 402.14). If your analysis of this proposed action results in a project that "may affect" Canada lynx, consultation should be initiated with this office.

We concur with your determination that the proposed project is not likely to adversely affect the Mexican spotted owl. In addition, we concur that the project will not result in adverse modification or destruction of designated critical habitat.

We base our concurrence primarily on the following:

Mexican spotted owl:

Mexican spotted owls in Utah breed and forage in steep-walled canyon complexes; these areas are typically cool, moist environments; however, owls have been located in dry, arid habitats with minimal vegetation (Mexican Spotted Owl Recovery Plan, 1995). The common characteristics of canyon sites is the presence of steep to vertical rock walls in all or part of the canyon. Foraging appears to occur primarily within the canyons or along the rim of the canyon (Willey 1998).

The Service had informally requested that BLM offices conduct initial analyses of potential project impacts using a predictive Mexican spotted owl habitat model that was developed for the state of Utah (Willey 1997). Model components include elevation, slope, curvature, and vegetation themes at a 1:250,000 scale. The 1997 model relies on a curvature index, so is valuable in predicting surface ruggedness that is indicative of potential habitat and should be used for first-cut analysis of large scale projects to identify areas with high-relief topography. A subsequent Mexican spotted owl model was developed in 2000. The 2000 model, which resulted from field testing the 1997 model, includes additional variables such as geology suitable for forming steep cliffs, aspect, a radiation index to predict areas with the cooler temperatures that the Mexican spotted owl appears to require, and steep slope mixed conifer habitat that is protected or restricted under the Recovery Plan. Field verification such as that conducted by David Willey for this project is necessary to confirm actual habitat.

After the presence of suitable habitat was confirmed and specific areas identified, surveys for MSO conducted by David Willey in 1997 and 2000 indicate that this species was not present within the proposed action area. Additional surveys were conducted in potential nesting/roosting habitat (1997 and 2000 habitat model) within the project area by Environmental Industrial Services (EIS) following USFWS protocol (2001 through 2003). These surveys did not verify the presence of owls in potential habitat within the project area.

Surveys following the USFWS protocol have not detected the presence of nesting owls. Although not found within the proposed action area, a nest has been found 25 miles to the southeast, and sightings have occurred 29 miles to the southeast, and the project area is still considered potential habitat. Dawson Geophysical has committed to implement mitigation

measures to minimize impacts and reclaim disturbed areas in Mexican spotted owl habitat in the project area (see Proposed Action in this letter and BA of August 10, 2003). Therefore, we believe that the habitat analyses and habitat mitigation commitments are appropriate and adequate to minimize potential impacts to the Mexican spotted owl to the insignificant and indiscernible level, if owls occur in the project area in the future.

An increase in habitat fragmentation could result if buggy-drilled seismic lines were to subsequently become used as OHV trails. Increased OHV recreational access could also increase human access to areas of potential Mexican spotted owl habitat, leading to increased disturbance to the Mexican spotted owl, particularly at any breeding areas, if they were to nest in the project area at some future date. In addition, if seismic lines were to becomes used as OHV trails, destruction of vegetation along these lines would lead to a decrease in cover and forage for Mexican spotted owl prey species. Vibroseis vehicles will be confined to existing roads and trails, so this activity will produce no surface disturbance that would result in increased access. Disturbance along heli-portable drilled portions of the seismic lines will be minimal because these areas are too steep for OHV use. A minimal amount of vegetation would be temporarily lost at shot hole location along heli-portable seismic lines. Dawson Geophysical and the BLM have also committed to implement mitigation measures to minimize impacts, reclaim disturbed areas, and place fencing and signs as needed in Mexican spotted owl habitat in the project area (see Proposed Action in this letter and BA of August 10, 2003). Therefore, Mexican spotted owls in these areas, if they occur in the area at all, will not be impacted by habitat fragmentation, human disturbance, or substantial loss of vegetation on a long-term basis.

Due to the survey reports that no owls have been confirmed nesting in the project area, the short-term nature of the activities, and the aforementioned applicant committed mitigation measures, we do not believe this project will incur a "take" of the Mexican spotted owl. "Take" includes harm and/or harass by actions that result in a significant habitat modification or degradation that results in injury or death, or significant disruption of normal behavioral patterns such as breeding, feeding or sheltering that results in injury or death. In addition, habitat degradation will be minimized to the insignificant level. Therefore, we concur that the proposed action is not likely to adversely affect the Mexican spotted owl.

Due to the minimal amount of surface disturbance to protected and restricted habitat, the short-term nature of the activities, and the aforementioned applicant-committed mitigation measures, we do not believe this project will result in an adverse modification or destruction of designated critical habitat. "Adverse modification or destruction" includes alteration of one or more of the primary constituent elements of protected or restricted habitat to an extent that the value of critical habitat for both the survival and recovery of the Mexican spotted owl is appreciably reduced.

Whooping crane, grizzly bear, gray wolf:

For future reference, you should know that as of July, 2002, the experimental, nonessential Rocky Mountain whooping crane population has been considered to be extinct, and has been removed from our county lists of TEC species. In addition, the grizzly bear is extirpated from the State of Utah and does not require consultation with this office. Dispersing gray wolves were located in northern Utah in the fall of 2002, however they are not currently considered residents

of the state, and are not expected to occur in the project area.

Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

Only a Federal agency can enter into formal Endangered Species Act section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

We appreciate your interest in conserving endangered species. If further assistance is needed or you have any questions, please contact Diana M. Whittington, Fish and Wildlife Biologist, at (801) 975-3330 extension 128.

cc: BLM State Office – Ron Bolander

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125 South 600 West
Price, Utah 84501

3150
(UT-070)

Ms. Diane Whittington
U. S. Fish and Wildlife Service
2369 West Orton Circle, Suite 50
Salt Lake City, Utah 84119

AUG 8 2003

Re: Stone Cabin Seismic 3D Survey Project

Dear Ms. Whittington:

Enclosed please find a revised biological assessment (BA) which incorporates your comments received on August 7, 2003. We believe the revised BA addresses changes that you requested in a meeting held July 23, 2003, at our office in Price. We would appreciate your timely review of the BA to ensure changes have been made to your satisfaction, and subsequently, the U. S. Fish and Wildlife Services' concurrence with the findings of the BA.

To keep to an established schedule, we would appreciate a letter of concurrence for us to incorporate into the environmental assessment (EA) which we plan to have completed by August 15, 2003. We realize this proposed date is aggressive, but hope that the close coordination on this project will allow you to meet the requested date.

We have not included a copy of the EA for this project, as it is being revised. We do appreciate your comments on this document and are incorporating them into the revised EA.

Please feel free to call David Mills of my staff at (435) 636-3624 or Mark Mackiewicz, PMP, project manager at (435) 636-3616 to discuss the BA or any other aspect of this project. We appreciate your assistance and look forward to your response.

Sincerely,

FRED O'FERRALL

Fred O'Ferrall
Associate Field Manager

Enclosure
BA

DMills:ks:8/8/03
Stone Cabin Section 7.ltr2